

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHARON L. SLONIGER,
Plaintiff,

Hon. Hugh B. Scott
v.

09CV984S

SIGMUND DEJA,
ROAD BEAR RV,
ROAD BEAR INTERNATIONAL,

**Order
and
Amended Scheduling
Order**

Defendants.

Before the Court is plaintiff's motion to compel defendant's deposition under specified conditions (Case No. 09CV984S, hereinafter the "984 Case" or "this case," Docket Nos. 21, 23¹). This is identical to motions in another case bearing this name (Sloniger v. Deja, Case No. 09CV858S², hereinafter the "858 Case," Docket No. 26). Both cases had identical briefing schedules for these motions, with responses due October 26, 2010, and any replies by November 2, 2010, and all motions being deemed submitted, initially without oral argument, on November 2, 2010 ('984 Case, Docket No. 22; '858 Case, Docket No. 27). Upon review of the papers in this case and in the '858 Case, the Court scheduled oral argument for November 16, 2010 ('984 Case, Docket No. 27; '858 Case, Docket No. 3). Following that argument, the Court

¹Docket No. 21 was filed without proof of service, so plaintiff refiled the motion as Docket No. 23 with certificate of service.

²A third action, Reed as Administratrix of Estate of Edward Sloniger v. Deja, Case No. 10CV379S, also was filed. Plaintiff in that case has not moved to compel defendant Deja's deposition.

reserved decision after defendant Deja reported on whether he traveled to the United States following the accident at issue in these cases (see ‘858 Case, Docket No. 35, Reeb letter; cf. id. Docket Nos. 36, 37, McGillicuddy letters). The Court then ordered Deja to submit an affidavit on this question by December 20, 2010 (‘858 Case, Docket No. 38), which defendant did and was filed on December 6, 2010 (‘858 Case, Docket No. 39).

Both motions seek an Order compelling the deposition of defendant Sigmund Deja in this District, to have Deja appear at a deposition in Germany with plaintiff’s travel expenses to be borne by Deja’s insurer or to have Deja’s Answer stricken. Plaintiff cited the New York CPLR as the basis for her motion, but similar relief is available under Federal Rule of Civil Procedure 37. During oral argument, co-defendants Road Bear RV and Road Bear International (collectively “Road Bear”) noted that they too sought co-defendant Deja’s examination, although not under the conditions sought by plaintiff, because of Road Bear defenses.

For reasons stated in the Order from the ‘858 Case (attached hereto), plaintiff’s motion (‘984 Case, Docket Nos. 21, 23; see also ‘858 Case, Docket No. 27) to compel defendant Deja’s deposition at the expense of his insurer is **denied**. The deposition of Deja in both actions shall take place in Germany by means of a video deposition, with each party bearing its own expenses. The parties shall agree upon a mutually convenient date and time for that deposition to be conducted within **ninety (90) days of entry of this Order**.

Also, as Ordered in the ‘858 Case, the Scheduling Order in this case (‘984 Case, Docket No. 14) is amended as follows: parties have 90 days from the entry of this Order to depose Deja; as a result, plaintiff’s expert disclosure is now due by **April 18, 2011**; defense expert disclosure by **May 24, 2011**; motions to compel by **June 1, 2011**, with all discovery to be completed thirty

days later by **July 1, 2011**. Furthermore, subsequent deadlines are also amended: dispositive motions (formerly due June 1, 2011) are now due **October 3, 2011**; mediation to end by **October 24, 2011** (rather than July 1, 2011, as previously ordered); and the Status Conference in both cases before Chief Judge Skretny (initially scheduled for June 16, 2011) now will be set by a separate Order for a later date.

So Ordered.

Hugh B. Scott

Honorable Hugh B. Scott
United States Magistrate Judge

Dated: Buffalo, New York
December 20, 2010

Attach. Order from Sloniger v. Deja, et al., No. 09CV858, Docket No. 43